

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Power and Light Company,  
as an Electric, Water and Natural Gas Public Utility, to  
Change Electric, Water and Natural Gas Rates

6680-UR-113

**FINAL DECISION**

This is the final decision regarding the request of Wisconsin Power and Light Company (WP&L) for authorization to increase electric rates under Wis. Admin. Code ch. PSC 116 because of an increase in its cost of fuel. The request is denied.

**Introduction**

The Commission promulgated Wis. Admin. Code ch. PSC 116 to set forth a method for considering fuel costs in setting electric rates. Wis. Admin. Code § PSC 116.01. On December 22, 2004, WP&L filed a request for approval to increase electric rates because of an increase in the cost of fuel in November and December 2004.

On January 14, 2005, the Commission reopened this docket and set an interim hearing for January 28, 2005, to consider WP&L's request. At the hearing, WP&L, Commission staff, and intervenors Wisconsin Industrial Energy Group (WIEG) and the Citizens' Utility Board (CUB) participated. WP&L, WIEG, and CUB subsequently filed briefs. The Commission held its discussion of the record at its Open Meeting of February 24, 2005.

### **Findings of Fact**

1. WP&L incurred increased fuel costs in November and December of 2004 because of outages at the Kewaunee Nuclear Power Plant and at other baseload power plants.
2. WP&L provided actual cost information for all of calendar year 2004 at the January 28, 2005, hearing. WP&L did not provide any forecast of fuel costs for the remainder of calendar year 2004 at the hearing, as the year 2004 was already over.
3. A revised forecast of future fuel costs for the remainder of the year is required to determine the annual average cost of fuel.

### **Conclusions of Law**

1. WP&L is a public utility, as defined in Wis. Stat. § 196.01(5)(a), and an electric public utility, as defined in Wis. Stat. § 196.20(4)(a)2.
2. The Commission has authority under Wis. Stat. §§ 196.02, 196.03, 196.20, 196.37, 196.39, and 196.395, and Wis. Admin. Code ch. PSC 116 to consider WP&L's request for an increase in electric rates because of an increase in the cost of fuel.
3. WP&L's fuel cost increase in November and December of 2004 does not require the Commission to authorize a rate increase under Wis. Admin. Code ch. PSC 116.

### **Opinion**

This opinion describes WP&L's request for the proposed electric rate increase and the positions taken by the intervenors in response to the request. The opinion also discusses the reasons for disapproval of the request.

### **The Request and Positions**

In the fall of 2004, the Kewaunee Nuclear Power Plant (KNPP) was taken off-line for scheduled maintenance. Although cost for an expected 35-day outage was budgeted for in the last WP&L rate case, the outage was longer as unexpected repairs were required. Other baseload plants were also down for a short period of time in December. Because of these outages, WP&L filed its fuel rules application on December 22, 2004, requesting authority to increase electric rates by \$9,159,762 annually.

At the hearing, WP&L revised its cost figures and requested a rate increase of \$8,653,612 based on actual fuel costs for December 2004. KNPP was placed back in service during December 2004, and remained in service through the end of the year. WP&L is not seeking any increase based on fuel costs incurred in 2005 or on cost increases expected in 2005.

WP&L argues that the rule by its plain language provides that a utility's electric rates may increase or decrease as a result of an extraordinary increase or decrease in fuel costs, as measured by variation in excess of the established tolerances for the month (or cumulatively) and for the calendar year being monitored. There is no limitation requiring that the rate change go into effect during that same year.

CUB argues that WP&L has not met the requirement of an extraordinary increase and to grant a rate increase in this situation would constitute retroactive ratemaking. CUB states that for the Commission to determine whether WP&L has in fact incurred an extraordinary increase in the cost of fuel, the Commission must determine whether the company has exceeded its current tolerances for either its cumulative or monthly fuel cost estimates and whether exceeding these tolerances "will cause the average cost of fuel of that utility to exceed the current tolerance

for that utility's annual fuel cost estimate . . . ." Wis. Admin. Code § PSC 116.03(9). CUB states WP&L submitted evidence that its fuel costs caused it to exceed its 2004 actual fuel costs. CUB argues that the fuel rule calls for a forward-looking estimate of annual fuel costs, not a backward stating of actual fuel costs. CUB also states the Commission cannot calculate WP&L's annual average cost of fuel because such a calculation should include a revised forecast of costs through the remainder of the year. Wis. Admin. Code § PSC 116.07(4). There is no remainder of 2004 left. CUB states that rate increases under the fuel rules are granted not to compensate for previously incurred fuel costs in prior months or in a previous year, but rather to adjust rates in light of new information concerning what the utility's actual fuel costs will be in the remaining months of a calendar year. Otherwise, a rate increase may be retroactive rulemaking.

WIEG also states a rate increase in this situation would constitute retroactive ratemaking. WIEG points out that Wis. Stat. § 196.20(4) prohibits automatic rate increases based on the cost of fuel and that the statute authorizes—but does not require—a rate increase in every instance of an extraordinary increase in fuel costs. WIEG also argues this situation does not meet the criteria under the fuel rules for granting an increase. WIEG states that several provisions of Wis. Admin. Code ch. PSC 116 indicate that it was intended to operate on a forward-looking basis within a calendar year running from January 1 to December 31. WIEG cites Wis. Admin. Code § PSC 116.04(1) and Wis. Admin. Code § PSC 116.07(4) which states that, "The annual average cost of fuel for purposes of the orders issued under subs. (2) and (3), shall be calculated by the actual prudent fuel costs reported in the most recent monthly report filed pursuant to s. PSC 116.05(1) and a revised forecast of the unit costs of fuel for the remainder of the year."

**Discussion**

It is well established that the Commission may not set rates retroactively. *See Friends of Earth v. Pub. Serv. Comm'n*, 78 Wis. 2d 388, 254 N.W.2d 299 (1977). The Commission may not order a utility to lower rates to compensate ratepayers for prior utility over-earning, nor may the Commission order a utility to increase its rates to recover prior costs. In essence, the Commission cannot make rates looking solely through its rear view mirror. Ratemaking is a forward-looking exercise.

The events that triggered the fuel rules request in this proceeding happened late in the calendar year. Although the fuel rules are intended to allow a utility the opportunity for relief in the face of extraordinary increases, the fuel rules are not intended to be a perfect mechanism for dollar-for-dollar cost recovery. At some point, an increase is not forward-looking but retroactive. In such a situation, a request must be denied. The intervenors in this matter have persuasively argued that in this situation, granting the request would constitute retroactive ratemaking.

Here, it is undisputed that WP&L provided actual fuel costs for all of 2004, with no component of future forecasts for the rest of the year. Reading the fuel rules as a unit, WP&L has not shown that its cost increase satisfies the requirements for a rate increase under the fuel rules. Under the rules, fuel costs are considered on a calendar year basis and a revised forecast of fuel costs for the remainder of the year is required under Wis. Admin. Code § PSC 116.07(4) to determine the annual average cost of fuel. The average cost of fuel is used to determine if an extraordinary increase in the cost of fuel has occurred. Because WP&L cannot estimate forward-

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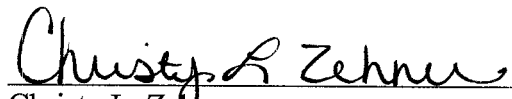
looking fuel costs for the remainder of the year, the fuel rules do not supersede the concern over retroactive rulemaking in this matter.

**Order**

WP&L's December 22, 2004, request for authorization to increase electric rates under Wis. Admin. Code ch. PSC 116 is denied.

Dated at Madison, Wisconsin, April 21, 2005

By the Commission:

  
Christy L. Zehner  
Secretary to the Commission

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See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98